



City of NORFOLK


C: Dir., Department of Recreation, Parks & Open Space

To the Honorable Council
City of Norfolk, Virginia

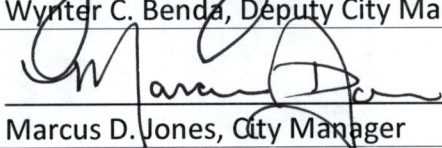
February 10, 2015

From: Darrell R. Crittendon, Director of Recreation,
Parks & Open Space

Subject: New Five-Year Lease
Agreement for the Access College
Foundation for space at 7300
Newport Avenue, Suite 500

Reviewed: 
Wynter C. Benda, Deputy City Manager

Ward/Superward: 1/6

Approved: 
Marcus D. Jones, City Manager

Item Number: PH-2

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Access College Foundation
P.O. Box 1357
Norfolk, Virginia 23501-1357

III. **Description**

This agenda item is an Ordinance authorizing a new five-year lease agreement between the City of Norfolk (the "City") and the Access College Foundation ("Access") to use space located at the Norfolk Fitness and Wellness Center known as 7300 Newport Avenue, Suite 500.

IV. **Analysis**

This Lease Agreement allows Access to use the space at Norfolk Fitness and Wellness Center to provide for the operation of its offices as a non-profit corporation which raises funds and places college Access advisors in public schools. The Agreement will be in effect during the time period of April 1st 2015 – through March 31st 2020.

V. **Financial Impact**

Access College Foundation will pay a base rent of \$10 per term. These funds have been previously deposited into a general real estate account.

VI. **Environmental**

There are no known environmental issues related to the Lease Agreement.

VII. Community Outreach/Notification

Public Notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A


IX. Coordination/Outreach

This letter has been coordinated with the City Attorney's Office.

Supporting Material from the City Attorney's Office:

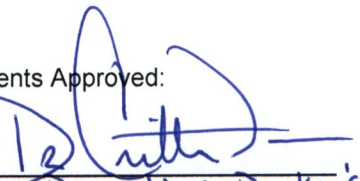
- Ordinance
- Lease Agreement

Form and Correctness Approved: 

By 
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By 
DEPT. Recreation, Parks & Open Space

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF NORFOLK, AS LESSOR, AND ACCESS COLLEGE FOUNDATION, AS LESSEE, FOR THE LEASE OF THAT CERTAIN PROPERTY OWNED BY THE CITY OF NORFOLK DESCRIBED AS 7300 NEWPORT AVENUE, SUITE 500, NORFOLK, VIRGINIA, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY OF NORFOLK.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease Agreement between the City of Norfolk, as Lessor, and Access College Foundation, as Lessee, a copy of which is attached hereto as Exhibit A, by which the City of Norfolk leases to Access College Foundation that certain property owned by the City of Norfolk known as 7300 Newport Avenue, Suite 500, is hereby approved.

Section 2:- That the City Manager is authorized to execute the Lease Agreement for and on behalf of the City of Norfolk, and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Lease Agreement as he may deem advisable in order to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after 30 days from the date of its adoption.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("Landlord"), and **ACCESS COLLEGE FOUNDATION** ("Tenant"), a Virginia non-stock corporation, whose address is 7300 Newport Avenue, Suite 500, Norfolk, Virginia 23505 [mailing address: P. O. Box 1357, Norfolk, VA 23501-1357].

WITNESSETH:

That in consideration of the mutual covenants and agreements herein contained, it is agreed by and between Landlord and Tenant as follows:

1. Basic Lease Provisions and Definitions. This Paragraph 1 is an integral part of this Lease and all of the terms hereof are incorporated into this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following, whenever used in this Lease shall have the meanings set forth in this Paragraph, and only such meanings, unless such meanings are expressly contradicted, limited or expanded elsewhere herein:

- (a) DATE OF LEASE: _____, 2015
- (b) PROPERTY ADDRESS: 7300 Newport Avenue, #500, Norfolk, VA, 23505.
- (c) LANDLORD'S MAILING ADDRESS: Real Estate Analyst, Office of Real Estate, Department of General Services, City of Norfolk, 232 E. Main Street, Suite 250, Norfolk, VA 23510, 757-664-4675
- (d) TENANT'S MAILING ADDRESS: P. O. Box 1357, Norfolk, VA 23501-1357.
- (e) TENANT'S TRADE NAME: Access College Foundation
- (f) PREMISES: As shown on Exhibit A.
- (g) GROSS LEASABLE AREA OF THE PREMISES: Approximately 2,800 square feet.
- (h) LEASE TERM:
Commencement date: April 1, 2015
Termination date: March 31, 2020
- (i) RENT: \$10.00 per Term.
- (j) SECURITY DEPOSIT: None.
- (k) PERMITTED USE: To provide for the operation of its offices as a non-profit corporation which raises funds and places college access advisors in the public schools.
- (l) EXHIBITS: The Exhibits attached to this Lease are hereby incorporated in and made a part hereof.
EXHIBIT A - Premises
EXHIBIT B - Parking Spaces

(m) CHECKS PAYABLE TO: Treasurer, City of Norfolk

2. Premises.

(a) Landlord hereby demises and lets unto Tenant and Tenant hereby leases and takes from Landlord the Premises identified in Paragraph 1 and more particularly shown on Exhibit A, subject to the terms and conditions herein contained and all liens, encumbrances, easements, restrictions, zoning laws and governmental or other regulations affecting the Premises.

(b) The location and boundaries of the Premises are shown on Exhibit A, and

(c) Tenant, its clients, employees, and invitees, shall be permitted to use the parking areas in the same manner and on the same basis as any other member of the public. Tenant shall also be entitled to the exclusive use of parking spaces as designated on Exhibit B (exact number and location of spaces within designated area will be agreed upon and included in an addendum to this document at a later date). However, Tenant may not reserve or designate any parking spaces for its use or for the use of its clients, employees or invitees that are for general use by other tenants or the public. All parking areas shall be subject to the exclusive control and management of Landlord. Landlord hereby expressly reserves the right, from time to time (i) to construct, maintain and operate lighting and other facilities, equipment, and signs on all of the parking areas provided such construction does not unreasonably affect visibility to Tenant's Premises; (ii) to police the parking areas; (iii) to change the area, level, location and configuration of the parking areas provided such changes do not unreasonably affect ingress and egress to Tenant's Premises; (iv) to restrict parking by tenant and tenant's employees and clients; and (v) to establish, modify and enforce reasonable rules and regulations with respect to the parking areas and the use to be made thereof. Landlord shall operate, manage, equip, police, decorate, light and maintain the parking areas in such manner as Landlord, in its sole discretion, may from time to time determine, and Landlord shall have the sole right and exclusive authority to employ and discharge all personnel with respect thereto.

(d) The Tenant shall also have the right to use in common with all others thereunto entitled the common areas of the Building, including the lobbies, corridors and restrooms. In addition, the Tenant shall have the right, to use other facilities in the Building, including large public rooms, the indoor and outdoor swimming pools, tennis courts and other athletic facilities, in accordance with the Facility Use Application process established by the Department of Recreation, Parks & Open Space (RPOS).

3. Term.

Tenant shall have and hold the Premises for the period set forth in the Lease Term, unless sooner terminated or extended as hereinafter provided.

4. Commencement of Term.

The Lease Term shall commence on the date provided in Paragraph 1(h).

5. Rent.

Tenant agrees to pay to Landlord, without previous demand therefore and without any setoffs or deductions whatsoever, the Rent, payable in a single payment, in advance, on or before the first day of the Lease Term.

6. Sales or Leasehold Tax.

Tenant shall be responsible for paying any sales or leasehold tax, or other tax, levied by any governmental authority. Such tax payment shall be paid directly to the appropriate governmental authority by Tenant promptly after receipt of any such tax bill.

7. Past Due Rents.

If Tenant shall fail to pay any rents or other charges, within ten (10) days after the same become due and payable, then Tenant shall also pay to Landlord a late payment service charge equal to the greater of One Hundred Dollars (\$100.00) or five percent (5%) of the amount of the payment due.

8. Place of Payments and Statements.

All payments and all statements and reports required to be rendered by Tenant to Landlord shall be delivered to Landlord or Landlord's designee at the Landlord's Mailing Address, or at such other place as Landlord may from time to time designate in writing.

9. Security Deposit.

There shall be no Security Deposit to Landlord.

10. Utilities.

(a) Tenant shall install and use the utilities serving the Premises in accordance with the criteria set forth herein, Landlord's rules and regulations and the

rules and regulations of the public or private utility company or the governmental agency supplying the same. Landlord shall not be liable for damages or otherwise for any interruption in the supply of any utility to the Premises, nor shall any such interruption constitute any ground for an abatement of any of the rents reserved hereunder.

(b) Tenant shall not overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which such utilities are supplied to, distributed in, or serves the Premises.

(c) Tenant shall make application for, obtain directly, be solely responsible for and promptly pay directly to the public or private utility company or governmental agency, whichever is supplying the same, as and when the same become due and payable, all charges for water and sewer electricity, gas, telephone, and any other utility used or consumed in the Premises, including, without limitation, all connection fees.

11. Condition of Premises.

Tenant agrees to accept the Premises in the current "AS IS" condition.

12. Tenant's Improvements and Installations.

(a) Tenant shall, at its sole expense, fully equip the Premises with all fixtures and equipment, lighting fixtures, furniture, furnishings, floor coverings and any other fixtures and equipment necessary for the proper operation of Tenant's enterprise.

(b) All betterments and improvements in or upon the Premises including, without limitation, all carpeting, floor coverings, attached shelving, lighting fixtures, wall covering, other fixtures and heating, ventilation and air conditioning equipment, shall, at the option of Landlord, become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the expiration, or sooner termination, of the Lease Term; provided, however, that Tenant's personal property, furniture, furnishings, signs and movable (unattached) trade fixtures shall remain the property of Tenant.

(c) Tenant shall not assign, lien, encumber, chattel mortgage or create a security interest in its signs, trade fixtures or other personal property in the Premises without first obtaining in each and every instance the prior written consent of Landlord. Any consent by Landlord to such security interest shall be granted or withheld in Landlord's reasonable discretion, and if granted shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent transaction. Any violation of the terms of this

provision by Tenant shall be without force and effect and shall not be binding upon Landlord.

13. Use of Premises.

Tenant agrees to use the Premises solely for conducting the Permitted Use. Tenant agrees not to use the Premises for any other purpose and to conduct Tenant's business under Tenant's Trade Name only.

14. Operation of Enterprise.

Tenant agrees to occupy and use the entire Premises continuously and uninterruptedly during the Lease Term for the Permitted Use, and to conduct Tenant's enterprise therein in a reputable manner.

15. Laws, Waste or Nuisance.

(a) Tenant agrees (i) to comply with all present and future governmental laws, ordinances, orders and regulations affecting the Premises or the use thereof and (ii) to comply with and execute all present and future rules, regulations and recommendations of Landlord's insurance carriers, if applicable.

(b) Tenant hereby agrees that Tenant, its employees, agents, contractors or invitees shall not, at any time, cause or permit Hazardous Material (as hereinafter defined) to be brought, stored, manufactured, processed, treated, distributed, used or disposed of in, about or from the Premises without the prior written consent of Landlord, which consent shall be granted or withheld at Landlord's sole and absolute discretion. Tenant shall submit with its request for such consent an itemized list of (i) all Hazardous Material which will be brought, stored, manufactured, processed, treated, distributed, used or disposed of in, on or from the Premises; (ii) the location in the Premises where such Hazardous Material will be stored; (iii) any special storage requirements (i.e., temperature); and (iv) the purpose or purposes for which the Hazardous Material is necessary. Tenant shall promptly submit a revised list in the event that the information in the prior list shall change. Tenant shall use, keep and store all Hazardous Material in a manner that complies with (i) all applicable laws and ordinances regulating any individual Hazardous Material or Hazardous Materials generally; (ii) all instructions and guidelines given by the manufacturer of any individual Hazardous Material; and (iii) all requirements of Landlord's insurance carriers. As used herein, the term "Hazardous Material" shall include petroleum products and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any state "Superfund" or "Superlien" law, or any other ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct covering such Hazardous Material as may now or at

any time hereafter be in effect.

(c) Tenant further agrees not to suffer, permit or commit any waste, nor to allow, suffer or permit any odors, vapors, steam, water, vibrations, noises or other undesirable effects to emanate from the Premises or any equipment or installation therein, or otherwise to allow, suffer or permit the Premises or any use thereof to constitute a nuisance.

16. Compliance with Americans with Disabilities Act of 1990.

Tenant shall comply with all laws, rules and regulations in connection with the Americans with Disabilities Act of 1990, as amended (the "ADA"). Tenant acknowledges that it is a "public accommodation" as defined by the ADA. If the ADA requires that action be taken with respect to the Premises, including without limitation removing barriers and altering the Premises in accordance with the ADA Accessibility Guidelines, such action shall be taken by Tenant. Tenant shall notify Landlord immediately upon receipt of an oral or written complaint or notice by an employee, customer, client, invitee, licensee, or governmental authority regarding a potential violation of the ADA. Tenant shall indemnify and hold Landlord harmless from and against any expense or liability (including attorney's fees) arising from Tenant's failure to fully comply with this section.

17. Signs, Awnings and Canopies.

Tenant agrees that there shall be no signs, awnings or canopies installed on the Premises without prior written permission granted by the Director of the Department of Recreation, Parks & Open Space and all required permits and/or approvals are acquired as mandated according to the Ordinance(s) of the City of Norfolk.

18. Insects and Rodents.

Tenant covenants that it will, at its own expense, take such steps as shall be necessary to keep the demised premises free of termites, roaches, rodents, insects and other pests and that it will save Landlord harmless from any damage caused thereby.

19. Damage by Vandals.

If the doors, roofs, window frames, glass or any part of the exterior of the demised premises are damaged by persons breaking, or attempting to break, into the

demised premises, or by vandals, Tenant covenants to repair immediately at its own expense, any and all such damage.

20. Assignment and Subletting.

(a) Tenant acknowledges that Tenant's agreement to operate in the Premises in accordance with the Permitted Use set forth herein for the entire Lease Term was a primary inducement and precondition to Landlord's agreement to lease the Premises to Tenant. Accordingly, Tenant's interest in the Premises shall be limited to the use and occupancy thereof in accordance with the provisions hereof and shall be nontransferable, without the prior written consent of Landlord, which consent Landlord may grant or withhold in Landlord's sole and absolute discretion. Any attempts by Tenant to sublet the Premises in whole or in part or to sell, assign, lien, encumber or in any manner transfer this Lease or any interest herein, without the prior written consent of Landlord shall be of no force and effect and shall constitute a default hereunder, as shall any attempt by Tenant to assign or delegate the management or to permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant. Landlord and Tenant acknowledge and agree that the foregoing provisions have been freely negotiated by the parties hereto and that Landlord would not have entered into this Lease without Tenant's consent to the terms of this Paragraph.

(b) If Tenant is a corporation and if the person or persons who own a majority of its voting shares at the time of the execution hereof cease to own a majority of such shares at any time hereafter, Tenant shall so notify Landlord. In the event of such change of ownership, whether or not Tenant has notified Landlord thereof, Landlord may terminate this Lease by notice to Tenant effective sixty (60) days after the date of such notice from Tenant, or the date on which Landlord first has knowledge of such transfer, whichever shall first occur.

21. Repairs, Alterations and Other Provisions Pertaining to the Premises.

A. Landlord reserves the right, at its sole discretion, and on such Terms and conditions it deems expedient, to lease the remaining spaces in the subject Building to others together with the right to use in common with all others thereunto entitled, the common areas of said Premises, including the lobbies, corridors, restrooms therein situated, provided however:

(i) Priority for use and scheduling of the facility for the purposes expressed in this Lease will be given to Tenant for all spaces that are dedicated or shared as outlined in the current lease agreement before being made available to other

Tenants, on the condition that Tenant gives to Landlord written notice of its intent to use shared space thirty (30) calendar days in advance of the date(s) of its intended use.

(ii) Requests by other Tenants for shared space will only be accepted starting twenty (20) working days prior to the date being requested. Requested use cannot compete with Tenant's programs and/or Purposes either for fee or not.

(iii) Landlord will make no offer to nor permit space in the Building to any other tenant or group to provide programming that competes with Tenant's programs and/or Purposes.

(iv) Landlord agrees that it will not use any space in the Building in a manner which interferes with Tenant's activities that are consistent with the Purposes.

(v) Landlord City will include wording in all future Tenant agreements, leases and/or renewals for space at the Norfolk Fitness & Wellness Center to protect the viability of this Landlord/Tenant relationship and ensure that no other Tenants compete with senior adult programming efforts either for fee or not.

(vi) Shared space is to be used in such a manner that allows it to be returned to its default set-up immediately after each use as the norm, but not longer than 24 hours taking into consideration the time of the next scheduled use of space. Shared space shall not be altered and/or re-purposed from its current state on a long-term basis and/or permanent basis by either party without both parties being in mutual agreement and without written permission by the Director of Recreation, Parks & Open Space (RPOS).

(vii) Landlord will have First Right of Refusal for any space(s) that may be vacated by current Tenants with said Tenant being offered the next Right of Refusal if Landlord doesn't desire use of the vacated space. (Additional space assignments to the Tenant may be added during the term of the partnership/lease by attachment of a memorandum signed by both parties.)

(viii) The Bureau Manager of Recreation, Parks & Opens Space (or designated representative) will meet, not less than, on a quarterly basis with the Tenant for the purposes of discussing any concerns and issues in order to maintain open communication between both parties.

B. The Tenant shall not have to pay for or be responsible for any portion of the expenses for garbage disposal and structural maintenance of the Building, or for any portion of the total utilities, including but not limited to water, sewer and electricity attributable to the Building during the Term of this lease.

C. The Tenant agrees to pay all charges for communication and data services provided on the Premises for exclusive use by the Tenant.

D. The Tenant agrees to pay the cost for routine maintenance to the Premises to preserve generally the condition of the Premises, and the custodial costs associated with maintaining the Premises. Landlord agrees to offer Tenant the use of Landlord's contracted custodial services ("Custodial Services") for the Premises; in the event that Tenant elects to use the Landlord's Custodial Services, Tenant shall reimburse Landlord for the increased cost of the Custodial Services in accordance with the written instructions provided by Landlord.

E. The Landlord agrees to do structural repairs and upkeep (both emergency and otherwise) to the Building (both interior and exterior) as may be required, in Landlord's discretion, during the Term of this lease. The Landlord further agrees to keep the plumbing, sewerage, heating, air-conditioning and lighting fixtures in operating condition during the Term of this lease. Notwithstanding anything to the contrary in this lease, Landlord shall have no responsibilities for any structural repair or upkeep for any portion of the Building requiring such repairs or upkeep due to, in whole or in part, alterations or improvements made by Tenant.

22. Tenant's Failure to Repair or Perform Covenants.

If Tenant shall fail to make repairs or to perform its other obligations in accordance with the provisions of this Lease, or if Landlord is required to make any repairs by reason of any act, omission, or negligence of Tenant, Landlord shall have the right, at its option, to make such repairs or to perform such obligations on behalf of and for the account of Tenant and to enter upon the Premises for such purposes, and Tenant agrees to pay the cost and expense thereof as additional rent hereunder.

23. Covenant Against Liens.

Tenant shall do all things necessary to prevent the filing of any mechanics' or other liens against the Premises by reason of any work, labor, services or materials performed or supplied or claimed to have been performed or supplied to Tenant, or anyone holding the Premises, or any part thereof, through or under Tenant. Without limiting the generality of the foregoing, Tenant agrees that Tenant shall include in all contracts and subcontracts for work to be performed on Tenant's behalf at the Premises provisions whereby such contractor or subcontractor acknowledges that Landlord has no liability under such contracts and subcontracts.

24. Indemnity.

(a) Tenant hereby agrees to defend, pay, indemnify and save free and harmless Landlord from and against any and all claims, demands, fines, suits, actions,

proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of or from or on account of any occurrence in, upon, at or from the Premises or occasioned wholly or in part through the use and occupancy of the Premises or any improvements therein or appurtenances thereto, or by any act or omission of Tenant or any subtenant, concessionaire or licensee of Tenant, or their respective employees, agents, contractors, or invitees while in the Premises, in, upon, at or from the Premises.

(b) Tenant and all those claiming by, through or under Tenant shall store their property in and shall occupy and use the Premises and any improvements therein and appurtenances thereto solely at their own risk, and Tenant and all those claiming by, through or under Tenant hereby release Landlord, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption, arising, directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof. Tenant, for itself, its successors, assigns and all those claiming by, through or under Tenant covenant and agree not to sue Landlord for any future act of negligence causing such parties any injury or damage.

(c) In addition, if Tenant breaches any of the provisions of this Lease regarding Hazardous Materials, or if the presence of Hazardous Material on the Premises results in contamination of or damage to the Premises, or if contamination of or damage to the Premises by Hazardous Material otherwise occurs for which Tenant is legally liable to Landlord, then Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Lease Term as a result of such contamination, including, without limitation, (i) diminution in value of the Premises (ii) damages for the loss or restriction of use of the Premises or of any amenity of the Premises, (iii) damages arising from any adverse impact on marketing of space, and (iv) sums paid in settlement of claims, attorneys' fees, consulting fees and expert fees. This indemnification of Landlord by Tenant shall include, without limitation, all costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any court or by any federal, state or local governmental authority because of Hazardous Material present in the soil, sewer or ground water on or under the Premises. Further, Tenant shall promptly and at its sole expense take all action necessary to return the Premises to the condition existing prior to the introduction of any Hazardous Material to the Premises; provided, however, that Landlord's approval of such action shall first be obtained.

(d) Landlord shall not be responsible or liable at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal

injury, or damage to property or business, or for business interruption, that may be occasioned by or through the acts, omissions or negligence of any other persons.

(e) Landlord shall not be responsible or liable at any time for any defects, latent or otherwise, in the Premises or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable at any time for loss of life, or injury or damage to any person or to any property or business of Tenant, or those claiming by, through or under Tenant, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises or caused by or resulting from acts of God or the elements, or resulting from any defect or negligence in the occupancy, construction, operation or use of the Premises.

(f) Tenant shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Premises or of any defects therein or in any of its fixtures, machinery or equipment.

(g) In case Landlord, without fault on its part, shall be made a party to any litigation commenced by or against Tenant, then Tenant shall indemnify and hold Landlord harmless there from and shall pay Landlord all costs and expenses, including reasonable attorneys' fees, which Landlord may sustain by reason thereof.

(h) Tenant expressly acknowledges that all of the foregoing provisions of this Paragraph shall apply and become effective from and after the date Landlord shall deliver possession of the Premises to Tenant in accordance with the terms of this Lease.

25. Tenant's Insurance.

(a) Tenant agrees to secure and keep in force from and after the date Landlord shall deliver possession of the Premises to Tenant and throughout the Lease Term, at Tenant's own cost and expense: (i) Comprehensive General Liability Insurance on an occurrence basis with minimum limits of liability in an amount of One Million Dollars (\$1,000,000.00) for bodily injury, personal injury or death and One Hundred Thousand Dollars (\$100,000.00) with respect to damage to property, which insurance shall specifically insure the contractual obligations of Tenant set forth in Paragraph 29, (ii) Fire Insurance, with extended coverage and vandalism and malicious mischief endorsements, in an amount adequate to cover the full replacement value of all fixtures and contents in the Premises so as not to be a co-insurer in the event of fire or other casualty; (iii) Plate Glass insurance covering all plate glass in the Premises; (iv) if the Permitted Use includes the sale and/or serving of alcoholic beverages, insurance covering any claims arising under applicable law relating to said uses that could be asserted against Landlord, Tenant or the Premises. All Comprehensive General Liability Insurance to be procured by Tenant shall be issued in the names and for the

benefit of Landlord and its designee(s). All policies required under this Paragraph shall contain the following endorsements: (i) that such insurance may not be cancelled or amended with respect to Landlord except upon thirty (30) days prior written notice from the insurance company to Landlord, sent by certified or registered mail; (ii) that Tenant shall be solely responsible for the payment of all premiums under such policy and that Landlord shall have no obligation for the payment thereof; (iii) that in the event of payment of any loss covered by such policy, Landlord shall be paid first by the insurance company for its loss; (iv) that there shall be an express waiver of any right of subrogation by the insurance company against Landlord, the Tenant hereby expressly waiving any such right of subrogation for any reason or occurrence whatsoever; and (v) that the City of Norfolk shall be specifically named an "additional insured" on all such policies. Tenant agrees to deliver to Landlord certificates or memoranda of insurance of all policies of insurance to be procured by Tenant within ten (10) days of the inception of such policies and, at least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord certificates or memoranda of insurance evidencing the renewal thereof.

Notwithstanding anything contained herein to the contrary, Landlord and Tenant each waive any and all rights to recover against the other for any loss or damage to such waiving party arising from any cause covered by any insurance required to be carried or actually carried by such party. Landlord and Tenant will from time to time cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises.

26. Destruction.

If the Premises is damaged by fire or other casualty Landlord may, in its sole and absolute discretion, repair and restore the Premises substantially to the condition thereof immediately prior to such damage or destruction; provided, however, Landlord's obligations to repair and restore shall be limited to the extent of any insurance proceeds received by Landlord. If Landlord determines not to repair or restore the Premises then Landlord may cancel this Lease by written notice of cancellation given to Tenant within one hundred twenty (120) days after the date of such occurrence, and thereupon this Lease shall cease and terminate with the same force and effect as though the date set forth in the Landlord's notice was the date herein fixed for the expiration of the Lease Term and Tenant shall vacate and surrender the Premises to Landlord. Unless this Lease is terminated by Landlord, as aforesaid, this Lease shall remain in full force and effect, and the parties waive the provisions of any law to the contrary. If by reason of such fire or other casualty the Premises is rendered wholly un-tenantable, the Rent shall be fully abated in which event (unless Landlord shall elect to terminate this Lease, as aforesaid) until thirty (30) days after notice by Landlord to Tenant that the Premises have been substantially repaired and restored or until Tenant's business operations are restored in the entire Premises, whichever shall occur sooner. Tenant shall continue the operation of Tenant's enterprise in the Premises

or any part thereof not so damaged during any such period to the extent reasonably practicable and safe from the standpoint of prudent business management. If such damage or other casualty shall be caused by the negligence of Tenant or of Tenant's subtenants, concessionaires, licensees, contractors or invitees, or their respective agents or employees, there shall be no abatement of rent. Except for the abatement of the Rent hereinabove set forth, Tenant shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration.

27. Default/Remedies/Bankruptcy.

(a) The following enumerated events shall constitute an event of default (an "Event of Default") by Tenant: (i) if this Lease is assigned or the Premises is sublet except as herein provided; or (ii) if Tenant shall fail (A) to pay, when due, any rent or other charge payable hereunder within twenty (20) days after written notice shall have been given to Tenant (or (B) to correct (or commence to correct) any default or to perform any of the other terms, covenants and conditions hereof for more than thirty (30) days after written notice shall have been given to Tenant specifying the nature of such default; or (iii) if any petition or pleading is filed by, or on behalf of, Tenant to declare Tenant insolvent or unable to pay its debts or meet its obligations under the laws of the United States or any state, or if a receiver of the property of Tenant is appointed or upon the levy of execution or other taking of property, assets or the leasehold interest of Tenant by process of law or otherwise in satisfaction of any judgment, debt, or claim against Tenant.

(b) Upon the occurrence of an Event of Default, Landlord shall have the following rights and remedies and, at Landlord's option, may take the following action:

(i) Landlord shall have the immediate right to reenter the Premises, either by summary proceedings, by force or otherwise and to dispossess Tenant and all other occupants there from and remove and dispose of all property therein or, at Landlord's election, to store such property in a public warehouse or elsewhere at the cost and for the account of Tenant, all without service of any notice of intention to re-enter and with or without resort to legal process (which Tenant hereby expressly waives) and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

(ii) Landlord shall have the right to terminate this Lease by giving Tenant a written three (3) days' notice of such cancellation.

(iii) If by reason of the occurrence of any such Event of Default, the term of this Lease shall end before the date therefore originally fixed herein, or

Landlord shall re-enter the Premises, or Tenant shall be ejected, dispossessed or removed there from in any manner, Landlord may re-let the Premises either in the name of Landlord or as agent for Tenant, for a term which, at Landlord's option, may be less than or exceed the period of the remainder of the term hereof. Landlord shall receive the rents from such re-letting and shall apply the same, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord second, to the payment of such expenses as Landlord may have incurred in connection with re-entering, re-letting, altering, repairing, redecorating or otherwise preparing the Premises for re-letting, including attorney's fees and the residue, if any, to the fulfillment of the terms, covenants and conditions of Tenant hereunder and Tenant hereby waives all claims to the surplus, if any. Tenant agrees to be liable for and to pay Landlord any deficiency between the rent, additional rents and other charges reserved herein and the net avails of re-letting. Landlord shall in no event be liable in any way whatsoever for the failure to re-let the Premises or, in the event of such re-letting, for failure to collect the rents reserved there under. Landlord is hereby authorized and empowered to make such repairs, alterations, decorations, subdivisions or other preparations for the re-letting of the Premises as Landlord shall deem fit, advisable and necessary, without in any way releasing Tenant from any liability hereunder, as aforesaid.

(iv) Landlord shall have a valid and subsisting lien for the payment of all rents, charges and other sums to be paid by Tenant (including all costs and expenses incurred by Landlord in recovering possession of the Premises and the re-letting thereof as provided under this Paragraph) upon Tenant's goods, wares, equipment, signs, fixtures, furniture and other personal property situated in the Premises, and such property shall not be removed there from without the consent of Landlord until the arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall have first been paid and discharged.

(v) Landlord may declare the entire balance of the rent for the remainder of the Lease Term to be due and payable.

(vi) Landlord may cure such Event of Default in any manner after giving Tenant written notice of Landlord's intention to do so (except in the case of emergency), in which event Tenant shall reimburse Landlord for all expenses incurred by Landlord in doing so, plus interest thereon at a lesser of the rate of eighteen percent (18%) per annum or the highest rate then permitted on account thereof by applicable law, which expenses and interest shall be additional rent.

(vii) No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless written notice of such intention is given to Tenant.

(viii) The rights and remedies herein reserved by or granted to

Landlord are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice Landlord's right to exercise any or all others.

(ix) In the event that Landlord must reply to letters or other communication from Tenant or Tenant's attorney, or if Landlord brings suit for the possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, or if Tenant brings any suit for any relief against Landlord, declaratory or otherwise, arising out of this Lease, then in each instance Tenant agrees to pay Landlord all costs, expenses and reasonable attorneys' fees that Landlord may have incurred in connection therewith.

(x) Tenant agrees that the venue and/or jurisdiction for any legal actions brought by Landlord pursuant to this Paragraph shall be in the City of Norfolk, Virginia.

(c) If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("Bankruptcy Code"), then Tenant, as a debtor-in-possession, or any trustee for Tenant agrees promptly, within no more than fifteen (15) days upon request by Landlord to the Bankruptcy Court, to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if (i) it cures or provides adequate assurance that the trustees will promptly cure any default hereunder; (ii) compensates or provides adequate assurance that Tenant will promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant's defaults; and (iii) provides adequate assurance of performance during the Lease Term of all of the terms, covenants, and provisions of this Lease to be performed by Tenant. In no event after the assumption of this Lease shall any then existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this Lease, as set forth above, shall include, without limitation, adequate assurance (i) of the source of rent reserved hereunder; and (ii) the assumption of this Lease will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required unless Tenant shall have paid and be current in all payments of Operating Costs, utilities or other charges therefore.

28. Access to Premises.

Landlord, in its sole discretion, shall have the right to place, replace, maintain and repair all utility equipment of any kind in, upon, above or under the Premises as may be necessary for the servicing of the Premises. Landlord and its

representatives shall also have the right to enter upon the Premises, upon reasonable notice, during all regular business hours (and in emergencies at all times) for the purpose of inspecting or exhibiting the same to purchasers, mortgagees and tenants, prospective or present, or for the purpose of making such repairs, additions, alterations or improvements thereto or thereon or to the building of which it forms a part as Landlord may deem desirable or necessary, and for any other lawful purpose.

29. Landlord's / Estoppel Certificates.

(a) Landlord and Tenant agree that this Lease shall be subject and subordinate at all times to all covenants, restrictions, easements and encumbrances now or hereafter affecting Landlord's title to the Premises and to all ground and underlying leases, the lien of any first mortgages or deed of trust in any amounts and to any lien resulting from any other method of financing or refinancing, and all advances thereon, which may now or hereafter be placed against or affect any or all of the land and/or the Premises, and to all renewals, modifications, consolidations, participations and replacements thereof. The aforesaid provisions shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage or ground or underlying Landlords. Notwithstanding anything herein to the contrary, in the event any Mortgagee or ground or underlying Landlord requests that this Lease be made superior, rather than subordinate, to the lien of any such mortgage or deed of trust or to any such ground or underlying lease, Tenant agrees to execute and deliver, within thirty (30) days following Landlord's written request therefore and without charge, any and all documents effectuating such priority.

(b) Tenant agrees that in the event of a sale, transfer or assignment of Landlord's interest in the Premises wherein the transferee expressly agrees in writing to assume Landlord's obligations under the Lease, to attorney to and to recognize such transferee, purchaser, ground or underlying Landlord or mortgagee as the Landlord under this Lease.

(c) Within twenty (20) days after request therefore by Landlord, Tenant agrees: to execute and deliver a certificate, in the form presented by Landlord, addressed to any proposed Mortgagee, any purchaser of the Premises and/or Landlord, certifying to matters requested by Landlord, including, without limitation, the accuracy of following: (i) that Tenant is in full and complete possession of the Premises, such possession having been delivered by Landlord or its predecessor and accepted by Tenant; (ii) that any improvements required to be furnished by Landlord by the terms of this Lease have been completed in all respects to the satisfaction of Tenant; (iii) that this Lease is in full force and effect and has not been amended, modified, supplemented or superseded except as specifically noted; (iv) that there is no existing default on the part of Landlord in the performance of any covenant, agreement or condition contained in this Lease to be performed by Landlord; (v) that Tenant does not have any actual or

pending claim against Landlord; (vi) that no rents or other charges have been prepaid by Tenant; and (vii) that the addressee of said certificate may rely on the representations therein made; and certifying as to the dates of commencement and termination of the Lease Term, the date on which rents commenced to accrue under this Lease, and the date through which rents and other charges hereunder have been paid.

30. Quiet Enjoyment.

Tenant, upon paying the rents herein reserved and performing and observing all of the other terms, covenants and conditions of this Lease on the Tenant's part to be performed and observed hereunder, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term, subject to the terms of this Lease and to any mortgages, ground underlying leases, agreements and encumbrances to which Lease is or may be subordinated.

31. Force Majeure.

The parties herein shall be excused for any period or periods of delay in the performance of any of either party's obligations hereunder when delayed, hindered or prevented from so doing by any cause or causes beyond said party's control, which causes shall include, without limitation, all labor disputes, riots, civil commotion or insurrection, war or war-like operations, invasion, rebellion, military or usurped power, sabotage, governmental restrictions, regulations or controls (including delays attributable to the actions and requirement of federal, state and local environmental protection agencies respecting water pollution and/or air pollution, storm drainage, sanitary sewer disposal, energy shortages and/or like matters), inability to obtain any materials, services or financing, fire or other casualties, or acts of God. If as a result of any of such events either party shall be unable to exercise any right or option within any time limit provided therefore in this Lease, such time limit shall be deemed extended for a period equal to the duration of such event.

32. Surrender of Premises.

Upon the expiration or sooner termination of the Lease Term, Tenant agrees, without the necessity of notice, to quit and surrender the Premises, broom clean, in good condition and repair, reasonable wear and tear excepted, together with all keys and combinations to locks, safes and vaults and all improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, except personal property and other unattached movable trade fixtures put in at Tenant's expense, all of which shall thereupon become the property of Landlord without any claim by Tenant therefore, but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder. Before surrendering the Premises, Tenant shall remove all of Tenant's said personal property and unattached movable trade fixtures and, at

Landlord's option, Tenant shall also remove as directed by Landlord any improvements, alterations, additions, fixtures, equipment and decorations at any time made or installed by Tenant in, upon or to the interior or exterior of the Premises, and Tenant further agrees to repair any damage caused by such removal. If Tenant shall fail to remove any of Tenant's personal property and trade fixtures, such personal property and trade fixtures shall, at the option of Landlord, either (i) be deemed abandoned and become the exclusive property of Landlord; or (ii) removed and stored by Landlord, at the expense of Tenant, without further notice to or demand upon Tenant, and Landlord may hold Tenant responsible for any and all charges and expenses incurred by Landlord therefore. If the Premises be not surrendered as and when aforesaid, Tenant shall indemnify Landlord against all loss or liability resulting from the delay by Tenant in so surrendering the same, including, without limitation, any claims made by any succeeding occupant founded on such delay. Tenant's obligations under this Paragraph shall survive the expiration or sooner termination of the Lease Term.

33. Holding Over.

In the event Tenant remains in possession of the Premises after the Lease has been properly terminated, without the execution of a new lease or other written agreement, such holding over shall, in the absence of a written agreement to the contrary, be deemed to have created and be construed to be a tenancy from month-to-month terminable on thirty (30) days' written notice by either party to the other, at a monthly rental equal to twice the sum of the rent for the Term of this Lease. Tenant shall not interpose any counterclaim or counterclaims in a summary proceeding or other action based on holdover.

34. Relationship of Parties.

Nothing contained in this Lease shall be deemed to constitute or be construed to create the relationship of principal and agent, partnership, joint ventures or any other relationship between the parties hereto, other than the relationship of landlord and tenant.

35. No Waiver.

The failure of Landlord to insist upon the strict performance of any provisions of this Lease, or the failure of Landlord to exercise any right, option or remedy hereby reserved shall not be construed as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by Landlord.

36. Notices.

Every notice, demand, request or other communication which may be or is required to be given under this Lease or by law shall be sent by United States Certified or Registered Mail, postage prepaid, return receipt requested, or sent by Federal Express or other overnight or express mail delivery service and shall be addressed: (i) if to Landlord, to Landlord's Mailing Address; and (ii) if to the Tenant, to Tenant's Mailing Address. Either party may designate, by written notice to the other party, any other address for such purposes.

37. Recording.

Tenant shall not record this Lease or any memorandum or short form hereof without the written consent of Landlord. All fees, costs, taxes and expenses in connection with the filing and recording of this Lease or any memorandum or short form hereof shall be the sole obligation of the requesting party..

38. Partial Invalidity.

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision, to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

39. Agents.

Tenant acknowledges that Landlord may manage the Premises through agents and agrees that Landlord's agents shall be entitled to the same rights of access to the Premises as Landlord and shall benefit from all covenants of Tenant with regard to indemnification, insurance and limitations of liability under the terms and conditions of this Lease to the same extent as Landlord.

40. Provisions Binding.

Except as otherwise expressly provided in this Lease, all covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition.

41. Entire Agreement.

This Lease, including the Exhibits, Riders and/or Addenda, if any, attached hereto, sets forth the entire agreement between the parties and shall not be modified except by an instrument in writing executed by Landlord and Tenant. The

submission of this document for examination does not constitute an offer to lease and becomes effective only upon execution and delivery thereof by Landlord and Tenant.

42. Survival of Obligations.

The provisions of this Lease with respect to any obligation of Tenant to pay any sum owing in order to perform any act after the expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

43. Representations.

Tenant acknowledges that neither Landlord nor Landlord's agents, employees or contractors have made any representations or promises with respect to the Premises or this Lease except as expressly set forth herein.

44. Corporate Tenant.

If Tenant is a corporation, the persons executing this Lease on behalf of Tenant hereby covenant, represent and warrant that Tenant is a duly incorporated or a duly qualified (if a foreign corporation) corporation and is authorized to do business in the State of Virginia; and that the person or persons executing this Lease on behalf of Tenant is an officer or are officers of such Tenant, and that he or they as such officers were duly authorized to sign and execute this Lease. Upon request of Landlord to Tenant, Tenant shall deliver to Landlord documentation satisfactory to Landlord evidencing Tenant's compliance with the provisions of this Paragraph.

45. Domestic or Foreign Corporation.

Tenant, by executing this Agreement, certifies that it is authorized to transact business in Virginia as a domestic or foreign business entity as required by the State Corporation Commission, or as otherwise required by law. Tenant further certifies that it will maintain such status during the term of this Agreement. This Agreement is voidable at the option of the City if, at the time Tenant entered into this Agreement, it was not authorized to transact business in Virginia as a domestic or foreign business entity; or, having qualified to enter into this Agreement fails to maintain such status during its term.

46. Compliance with Federal Immigration Law.

At all times during which any term of this Lease is in effect, Tenant does not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted

for permanent residence in the United States nor authorized to be employed either by Title 8, Section 1324a of the United states Code or the U. S. Attorney General.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this lease agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk Date

**COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:**

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the ____ day of _____, _____, do hereby certify that Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names are signed to the foregoing Lease Agreement dated _____, 2015, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2015.

_____[SEAL]
Notary Public

Registration No.: _____
My Commission Expires: _____

ACCESS COLLEGE FOUNDATION

By: _____

Title: _____

Date

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of _____, in the State of _____, whose term of office expires on the ____ day of _____, _____, do hereby certify that _____ whose name is signed to the foregoing Lease dated _____, 2015, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2015.

_____[SEAL]
Notary Public

Registration No.: _____

My Commission Expires: _____

APPROVED AS TO CONTENTS:

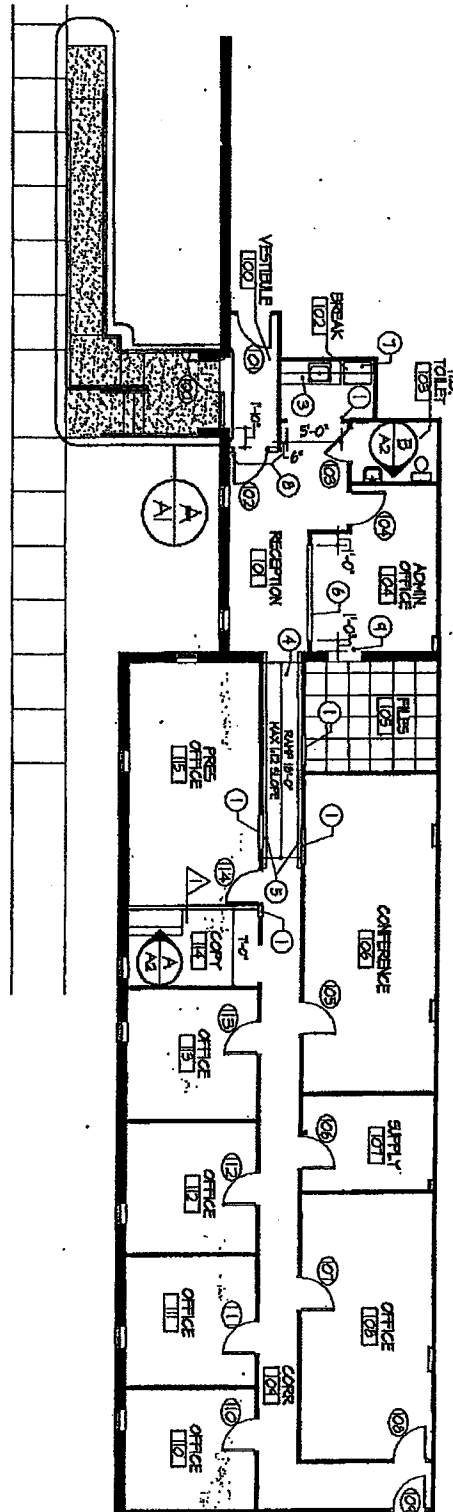
Darrell R. Crittendon, Director
Department of Recreation, Parks & Open Space

APPROVED AS TO FORM AND CORRECTNESS:

Nada N. Kawwass
Deputy City Attorney

Ex. A

SCALE: 1/16" = 1'-0"



HBA

NEW OFFICES FOR
ACCESS COLLEGE FOUNDATION

7900 NEWPORT AVENUE, SUITE 500 NORFOLK, VA

NEW WORK PLAN

HBA ARCHITECTURE & INTERIOR DESIGN, INC. ONE COLUMBUS CENTER, SUITE 1000
VIRGINIA BEACH, VIRGINIA 23462 PHONE 757-490-9048 FAX 757-490-7081

Project: 05COMM019

SKA1.1

1 of 1

Date: 8-18-05

Norfolk Fitness & Wellness Center

Parking for
Access College



EX.B